

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: SS 15/2017

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

MAXWELL ZWELITHINI ZONDI

Appellant

and

THE STATE

Respondent

S U M M A R Y

- [1] The appellant was granted leave to appeal by the Supreme Court of Appeal (SCA) after he was refused bail by the court *a quo*. The appellant had been convicted by the trial court on two counts of murder, three counts of attempted murder, the unlawful possession of a firearm, and possession of ammunition.

- [2] Guided by section 65(4) of the Criminal Procedure Act 51 of 1977 (the CPA) which sets out the test for with bail appeals from the lower courts to the High Court, the Court was of the view that the same test should be applied in this bail appeal. The Court found that in order to interfere with the decision of the court *a quo*, it must determine that the court *a quo*'s decision was wrong.
- [3] After considering the precedent set in matters such as *State v Barber* and *State v Porthen & Others*, the Court was of the view that it could only conclude that the decision of the court *a quo* was "wrong" if it considered all the relevant aspects for and against the granting of bail to the appellant. Furthermore, the Court found that, in terms of section 60(11)(a) of the CPA, the appellant must show that exceptional circumstances exist which, in the interests of justice, permit his release.
- [4] The appellant submitted that these circumstances are to be found in the fact that the appellant obtained leave to appeal from the Supreme Court of Appeal against his conviction. He further argued that this aspect, together with the appellant's unblemished record pertaining to the manner in which he stood his bail during the trial and other personal circumstances, constituted exceptional circumstances.
- [5] The Court observed that the court *a quo*, in its refusal of bail, considered the personal circumstances of the appellant as well as the fact that he properly stood his bail during the trial. The Court also noted that the track record of the appellant is a relevant fact but, after conviction and sentence, the situation materially changed. The presumption of innocence lapsed and therefore, this could no longer assist the appellant.
- [6] The Court found that it could only conclude that there remains a reasonable prospect of success on appeal as was found by the SCA, but nothing more. The Court held that the court *a quo* went to some length to consider the merits of the matter and concluded that it would not be in the interest of justice to grant the appellant bail. The Court concluded that it could not be found that the court *a quo* was wrong in its decision not to grant the appellant bail pending his appeal.

[7] The Court ordered that the appeal be dismissed.